

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED

MAR 23 2009

[Signature]
CLERK

ANTHONY LOCKE/LAFONTAINE,

CIV 09-1005

Petitioner,

-vs-

ORDER

BOB DOOLEY, Warden,
Mike Durfee State Prison,

Respondent.

Petitioner pleaded guilty to grand theft in the Fifth Judicial Circuit, Roberts County, South Dakota. He was sentenced on November 29, 2007, to ten years custody in the South Dakota State Penitentiary, with five years suspended upon conditions. Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, seeking to attack his state court conviction.

Petitioner is required to exhaust state court remedies prior to bringing federal habeas corpus claims. 28 U.S.C. § 2254(b). "The exhaustion requirement has as its purpose giving state courts 'the first opportunity to review federal constitutional issues and to correct federal constitutional errors made by the state's trial courts.'" Smittie v. Lockhart, 843 F.2d 295, 296-97 (8th Cir. 1988). A state court habeas remedy is available to plaintiff pursuant to SDCL 21-27-1. The petition does not show that petitioner has in fact exhausted his state court habeas remedies. Since there is no time limit for bringing such a claim, SDCL 21-27-3.1, that remedy is still available to petitioner. Pursuant to 28 U.S.C. § 2254(b), the petition must be dismissed without prejudice to allow petitioner an opportunity to exhaust his state court remedies.

Based upon the foregoing,

IT IS ORDERED that petitioner's petition is dismissed without prejudice.

Dated this 20th day of March, 2009.

BY THE COURT:

[Signature: Charles B. Kornmann]
CHARLES B. KORNMANN
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: *[Signature: Barbara J. Roepke]*
DEPUTY
(SEAL)